

**HIGH COURT BOMBAY****Bench: Justices N.R. Borkar and Kamal Khata****Date of Decision: 5th June 2024**

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8071 OF 2024

**AZHAR BASHA TAMBOLI LTD & ORS ...PETITIONER****VERSUS****RAVI S GUPTA & ORS ...RESPONDENTS****Legislation:**

Article 226 of the Constitution of India

Cinematograph Act, 1952

Sections 153A, 292, 293, 295A, 505 of the Indian Penal Code, 1860

**Subject:** Writ Petition seeking a Writ of Mandamus against the Chairperson of the Central Board of Film Certification (CBFC) to revoke the certification granted to the film "Hamare Baarah" and to stay its release on any public platform.

**Headnotes:**

Cinematograph Act – Certification of Film – Petition filed under Article 226 of the Constitution challenging the certification of the film "Hamare Baarah" – Alleged that the film contravenes provisions of the Cinematograph Act and violates Articles 19(2) and 25 of the Constitution – Petitioner sought to restrain the film's release on grounds of derogatory portrayal of Muslim women and misrepresentation of religious texts [Paras 1-3, 5].

Ad-Interim Relief – Stay on Release – Court viewed the trailer and found prima facie a case made out by the Petitioner – Noted absence of producers despite being served – Respondents argued certification was granted after mandated modifications – Court restrained the release of the film till 14th June 2024, pending further hearing [Paras 6-9].

Decision: Respondent Nos. 1 to 6 restrained from releasing or exhibiting the film "Hamare Baarah" on any public platform till 14th June 2024 – Matter to be heard by another Bench or the Regular Bench on 10th June 2024 – Respondents to file replies by 10th June 2024 [Paras 10-12].

**Representing Advocates:**

Mr. Mayur Khandeparkar with Aneesa Cheema, i/b Rekha Musale & Nitin Rajguru, for the Petitioner

Mr. KN Solunke, AGP, for the Respondent-State

Mr. Advait Sethna with P Roychaudhary for Respondent No. 7, 8 & 14

Ms. Madhu Godadia, with Sujoy Mukherji & Deveesha Tudekar, i/b Anand & Naik, for Respondent No. 9

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1. This Petition is filed under Article 226 of the Constitution of India seeking a Writ of Mandamus against the Chairperson of Central Board of Film Certification (“CBFC”) to revoke the certification granted to the film “Hamare Baarah” (“the film” for short) and thereby injunct it from being released in public domain in any manner or form.

2. The Petition alleges that the film is in complete contravention of the provisions of the Cinematograph Act, 1952 (“Cinematograph Act”) read with the rules and guidelines. The Petition alleges that the film is wrongly certified and the release would violate Article 19(2) and Article 25 of the Constitution.

3. Mr. Khandeparkar for the Petitioner submits that the upon viewing the trailer of the film on YouTube (Respondent No. 10) the Petitioner learnt that the film inter alia portrays lives of married Muslim women to have no independent rights as individuals in society owing to “Aayat 223” a verse in the Quran which in his view is entirely wrong and a misreading of the verse. He submits that despite the modifications directed to be carried out prior to the release of the film the trailer did not contain any disclaimer nor any reference to the certification granted by CBFC (Respondent No 8). He submits that the trailer contains various dialogues and visuals which are derogatory to the Islamic faith but also to married muslim women in India.

4. Mr Khandeparkar submits that though served neither the producers (Respondent Nos 1 to 4 ) nor the director (Respondent No 5) nor the representative from the production house (Respondent No 6) were present. In the circumstances Mr Khandeparkar submits that it would suffice if prayer clause (i) is granted as and by way of an ad-interim relief. The prayer clause (i) reads as under:

“(i) Pending the final hearing and disposal of the present Petition, this Hon’ble Court be pleased to stay the release of the film namely “HAMARE BAARAH” on any public platform”.

5. In support of the contention for grant of ad-interim relief Mr Khandeparkar shows us the trailer of the film on his iPad and draws our attention to the dialogues reproduced at page 17 of the Petition. He also draws our attention to section 5B of the Cinematograph Act and sections 153A, 292, 293 295A and 505 of the Indian Penal Code, 1860 and submitted that a public exhibition of the film would hurt the sentiments of the Muslims and may create hatred in the society as more particularly pleaded in the petition.
6. Per contra Mr Sethna for Respondents Nos. 7, 8 and 14 submits that the certification has been granted to the film after following all the necessary procedures. He relies on the certification dated 23rd January 2024 and 3rd April 2024 and more particularly the excisions and modifications and tenders the same for our perusal. He submits that only after the objectionable scenes and dialogues were deleted that the film has been certified. Consequently the Petitioner's contention that the dialogues and scenes have not been deleted would be baseless as he has not seen the film. He further submits that the trailer released on YouTube as well as Book My Show are the not certified trailers. He submits that his clients would adopt such measures as deemed necessary to withdraw these uncertified trailers after following due process in law. He submits that the Respondents would take appropriate action against the producers if necessary after the appropriate hearing and decision thereon with regard to the exhibition of uncertified trailers on YouTube.
7. Mr Gadodia for the distributor (Respondent No. 9) submits that they are no longer associated with this film and are not the distributors. Thus they would not be responsible in release of the film on 7th June 2024 as contented on conjecture and surmise of the Petitioner. The statement on behalf of the distributor is accepted and noted.
8. On insistence by Mr. Khandeparkar we viewed the trailer of the film. We also perused the petition. Having heard all Counsel at some length, we find that prima facie a case is made out by the Petitioner. The issue of locus of the petitioner will have to be decided. However, we are of the view that the matter will have to be heard before any conclusion is drawn. The producers are not present though served. A reply would be necessary from the Respondents 7,

- 8 and 14. The film may also be required to be viewed to draw any conclusion with regard to the rival contentions. This bench is available only for today. Hence the matter would necessarily have to be heard by another Bench or the Regular Bench.
9. In view of the aforesaid circumstances we deem it fit to pass the following order:
- “Respondent Nos. 1 to 6 are restrained from in any manner exhibiting, circulating or making available for viewership to the general public the film in question, namely “Hamare Baarah” on any public forum/platform including the platforms of the Respondent Nos. 10 to 12 till 14th June 2024.”
10. The matter be placed before the Regular Court on 10th June 2024.
11. The Producers and the Petitioner are granted liberty to mention the matter if required both during vacation or before the Regular Court.
12. Respondents to file and serve their replies on or before 10th June 2024.
13. All concerned to act on the authenticated copy of this order.

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